

**ALLOCATION SETTLEMENT AGREEMENT**

This Allocation Settlement Agreement (this “Agreement”) is entered into on this 4<sup>th</sup> day of March, 2022, among Michael I. Goldberg as Receiver on behalf of Champlain Towers South Condominium Association Inc. (the “Receiver”), the Personal Injury and Wrongful Death Class (the “WDC”), and the Unit Owners at the Champlain Towers South Condominium, their personal representatives or other successors (each a “Unit Owner” and collectively, the “Unit Owners”). Each of the Receiver, WDC and each of the Unit Owners is referred to as a “Party”, and collectively to as the “Parties”.

**RECITALS**

A. WHEREAS, the Champlain Towers South Condominium Association was a condominium formed pursuant to Chapter 718, Florida Statutes and located at 8777 Collins Avenue, Surfside, Florida 33154 (the “Condominium”).

B. WHEREAS, the Champlain Towers South Condominium Association, Inc. (the “Association”) was the governing body formed to conduct the affairs of the Condominium.

C. WHEREAS, the Champlain Towers South Condominium building tragically collapsed on June 24, 2021 (the “Collapse”).

D. WHEREAS, following the Collapse, Unit Owners and others present in the Condominium at the time of the Collapse and/or their relatives or representatives (collectively, the “Claimants”), began to file lawsuits against the Association for the bodily injuries and/or property damages suffered as a result of the Collapse. Additional lawsuits may be filed in the future including lawsuits filed by additional Claimants or individuals and entities other than the Claimants. All lawsuits filed by any parties against the Association and related to the Collapse, including, but not limited to, the Consolidated Class Action Complaint discussed in paragraph I, below, and those that may be filed in the future, will hereinafter be referred to as the “Collapse Lawsuits”. For purposes of this Agreement, “WDC” means all persons who suffered personal injuries as a result of the Collapse of the Condominium, and the personal representatives, survivors, and beneficiaries of the estates of all persons killed as a result of the Collapse.

E. WHEREAS, this Agreement is intended to address, resolve and settle only (i) the Participating Unit Owner’s claims for property damage or economic loss of their Unit and the contents thereof (except as set forth in paragraph 3.h. of this Agreement) (the “Participating Unit Owners Property Damage Claim”), (ii) the claims of the WDC against the Association, its past or current members of the Board of Directors and the Participating Unit Owners, and (iii) all disputes regarding the Receiver’s right and obligation to assess the Units to address the Association’s liability to the WDC except to the extent a Unit Owner elects to opt out of this Agreement and challenge the Receiver's authority to assess that Unit Owner. For the avoidance of doubt, this Agreement does not alter, release, waive or impair any claim of a Participating Unit Owner for personal injury or wrongful death (“Participating Unit Owners PI/Wrongful Death Claim”) against any person or entity that is not expressly released by this Agreement.

F. WHEREAS, those Collapse Lawsuits which have been filed to date have been consolidated before the Honorable Michael A. Hanzman of the Circuit Court in and for Miami-Dade County, Florida (the “Court”).

G. WHEREAS, pursuant to the Court’s Agreed Order Appointing Receiver dated July 2, 2021, the Court appointed Michael I. Goldberg as the Receiver for the Association (the “Receivership Estate”) and granted him authority to act on behalf of the Association.

H. WHEREAS, pursuant to its Amended Order Appointing Plaintiffs’ Counsel and Addressing Certain Case Management Issues dated July 16, 2021, the Court appointed the Plaintiffs’ Lead Counsel and Steering Committee. The Court further ordered that the Collapse Lawsuits will proceed on a dual track – one for actions claiming personal injury and wrongful death (Bodily Injury Claimants) and another where the only claims are for economic damages (Property Damage Claimants). The Court further ordered that all claims brought on behalf of putative class members will advance in a single consolidated class action, and all other cases related to the Collapse will be stayed, placed in civil suspense, and provisionally closed.

I. WHEREAS, on July 16, 2021, the Court further ordered Plaintiffs’ Lead Counsel and Steering Committee to file a consolidated class action complaint against the Association, thereby consolidating the claims against the Association, which complaint was filed on August 16, 2021. Thereafter, on November 16, 2021, a Consolidated Second Amended Class Action Complaint was filed (the “Consolidated Class Action Complaint”).

J. WHEREAS, the WDC was formed to represent the interests of those tragically killed and/or who suffered personal injuries in the Collapse whose members have asserted claims arising from the Collapse.

K. WHEREAS, the Unit Owners asserted their position that they were entitled to One Hundred Percent (100%) of the proceeds of the pending sale of the Condominium Property as that term is defined in Section 2.14 of the *Amended and Restated Declaration of Condominium of the Champlain Towers South Condominium Association, Inc.* (the “Declaration”) for which a One Hundred Twenty Million Dollars (\$120,000,000.00) stalking horse bid is in place, subject to higher and better offers at auction, as well as available property insurance proceeds of Thirty Million Dollars (\$30,000,000.00) (the “Initial Demand”), while the WDC asserted that the Unit Owners were entitled to none of those proceeds given the Association’s power to assess Unit Owners for liabilities in excess of insurance coverage up to the value of each Unit Owner’s Unit, including, but not limited to, liabilities asserted by the Bodily Injury Claimants, pursuant to Fla. Stat. § 718.119(3) (the “Assessment Dispute”).

L. WHEREAS, at the time of the Collapse the Association had general liability insurance in the amount of \$18 million and the Receiver has made a determination that the Association is exposed to liability significantly in excess of the general liability insurance and has provided notice to the Unit Owners of such exposure pursuant to Fla. Stat. § 718.119(3).

M. WHEREAS, disputes have arisen between the Bodily Injury Claimants and the Property Damage Claimants regarding the allocation of proceeds or recoveries amongst those two classes (the “Class Disputes”). In an effort to resolve the Class Disputes, the Court directed certain,

but not all, representatives of each class, together with counsel who volunteered to assist the parties to reach resolution, to participate in a mediation (the “Mediation Participants”). In order to ensure that the mediation was indisputably conflict free, the Court appointed Gonzalo Dorta, Esquire (who represents only Property Damage Claimants) to lead the negotiations on behalf of the Unit Owners and Judd Rosen, Esquire (who represents only clients with wrongful death claimants who are not Unit Owners) to lead the negotiations on behalf of the respective groups.

N. WHEREAS, on February 4, 2022 and continuing thereafter, the Mediation Parties participated in a mediation conducted by Bruce Greer, Esq., the mediator appointed by the Court, which resulted in the Mediation Parties establishing parameters for a resolution of the Class Disputes and the Assessment Dispute.

O. WHEREAS, based on those parameters, the Mediation Parties requested the Receiver to prepare this Agreement pursuant to which, and subject in all respects to Court approval and the right of Unit Owners to opt out and not participate in the settlement: (i) the Unit Owners accept Eighty Three Million Dollars (\$83,000,000.00)<sup>1</sup> (the “Common Fund”)<sup>2</sup> from the Receivership Estate to be allocated solely between and among the Participating Unit Owners, as defined below, to compensate them for the loss of their Unit and all of their property rights in the Condominium and the Condominium Property; (ii) a litigation bar order entered by the Court in their favor barring all claims against them arising out of the Collapse as set forth below; and (iii) a settlement of the Assessment Dispute, including a release by the Receiver on behalf of the Association of any personal liability a Participating Unit Owner may have for assessments under the Declaration and applicable Florida law, including Chapter 718.119, Florida Statutes.

P. WHEREAS, some Unit Owners have been paid monies for loss of contents by one or more insurance companies, for example, by Universal Property & Casualty Ins. Co. (“Universal”) as reflected in its action against, among others, the Association (Case No. 2021-015089-CA-01). Specifically, Universal seeks \$6,043,536.33 in a subrogation claim against the Association based on funds Universal expended on behalf of its insured Unit Owners in Count I of Universal’s *Amended Complaint* (the “Subrogation Action”). The insured Unit Owners waived any claims against the Association in Section 10.2 of the Declaration “for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property.”<sup>3</sup> The only method by which the Receiver can satisfy subrogation claims of any insurers would be to assess Unit Owners who received monies from the insurers for property losses. Accordingly, because (i) definitionally, an insurer cannot assert a subrogation claim against its insured, only against one or more third parties, (ii) the rights of an insurer through subrogation are the same rights of its insureds in whose shoes the insurer steps, (iii) the insurers of the Unit Owners’ claims are barred by Florida law including but not limited to the concept of the Made Whole Doctrine, and (iv) the Unit Owners waived their right to assert claims against the Association in the Declaration, a covenant running with the land, then an insurer who paid funds for personal property loss to a Participating Unit Owner would lack rights in, or the ability to

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<sup>1</sup> This is a Sixty-Seven Million Dollar (\$67,000,000.00) discount from the Unit Owner's Initial Demand [\$120,000,00.00 (minimum sale proceeds) + \$30,000,000.00 (insurance proceeds) - \$83,000,000.00 (settlement amount) = \$67,000,000.00 (negotiated discount)],

<sup>2</sup> The Common Fund may be subject to reduction to the extent the Court determines that insurance paid to Unit Owners should be offset from this amount.

<sup>3</sup> The Unit Owners also waived claims against the Association under the Association's by-laws.

exercise control over a Participating Unit Owner's Individual Percentage Share in, the Common Fund.

Q. WHEREAS, this Agreement is expressly and entirely contingent upon the grant of releases provided by the WDC members in favor of the Participating Unit Owners below and entry of a litigation bar order (the "Bar Order") in favor of the Participating Unit Owners in the form attached hereto as Exhibit A, which shall become Final as defined herein., "Final" means an order entered on the docket of a court of competent jurisdiction which has not been modified after the conclusion or expiration of any right or time period of any person or party to file a (x) motion seeking rehearing, reconsideration, clarification or modification, in whole or in part, or (y) notice of appeal of the order. Without in any way limiting the foregoing, an order, including the Bar Order, is not considered Final as used herein during the pendency of any appeal or rehearing of the order, or during the time that an appeal, rehearing, reversal, reconsideration, or modification of the order remains possible. The Bar Order is an essential term of this Agreement as are the releases set forth herein. The Participating Unit Owners would not enter into this Agreement absent the entry of the Bar Order and the Bar Order becoming Final.

R. WHEREAS, the Parties, subject to the approval of the Court and the right of a Unit Owner to opt out of this Agreement, now wish to reach an amicable and final resolution and settlement of claims, causes of action, and demands between them, and resolve and settle all issues raised or that could have been raised arising from the Collapse (except those parties and/or claims expressly excluded from the Bar Order) with respect to the PI/Wrongful Death Claims and the Property Damage Claims.

NOW THEREFORE in consideration of the mutual promises and covenants set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

1. **Recitals.** The Parties represent, warrant and affirm that the above recitals are true and correct, except for such recitals based on the allegations asserted by one or more Parties. The recitals set forth above are an integral and material part of this Agreement and are incorporated herein by reference.

2. **Effectiveness.** On the date this Agreement is fully executed by the signatories hereto, meaning the date that the final signatory executes this Agreement (the "Execution Date"), this Agreement shall take effect, subject to: (a) approval and entry of the Bar Order by the Court; (b) the Bar Order becoming Final; and (c) release of assessment rights by the Receiver against any Participating Unit Owner, but without prejudice to the Receiver's recovery for any assessment or liability insurance available under any policy of insurance. Stated differently but without limiting the foregoing, and as further provided herein, in the event the Bar Order is not issued, or the Bar Order is issued and is subsequently vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Participating Unit Owners as more fully described in the Bar Order attached hereto as Exhibit A, then, unless thereafter mutually agreed to by the Parties in writing, (i) this Agreement shall be null, void, and of no further effect; (ii) the Parties shall not be bound by the releases set forth in this Agreement; and (iii) the Parties shall proceed to litigate their claims as if this Agreement had not been executed.

3. **Settlement.**

a. **Settlement Amount.** Subject to the terms and conditions of this Agreement and in full and final resolution of the claims subject to the Bar Order, the Receiver shall pay or cause to be paid the amount of the Common Fund to the Participating Unit Owners to be allocated amongst the Participating Unit Owners in accordance with the Declaration or as ordered by the Court.

b. **Segregation of Common Fund/Payment.** On or before the 21<sup>st</sup> day after the Bar Order becomes Final (the “21<sup>st</sup> Day”), the Receiver, to the extent there are sufficient funds, shall set aside in a segregated account the Common Fund subject to distribution to the Unit Owners in accordance with subsequent orders of the Court after notice and hearing. In the event there are insufficient funds on the 21<sup>st</sup> Day, the Receiver shall fund the Common Fund as soon thereafter as he has sufficient funds to do so (the “Later Funding Date”).

c. **Settlement of Assessment Dispute.** Effective upon the Bar Order becoming Final, and in settlement of the Assessment Dispute, the Association agrees it has a settlement obligation of \$196,000,000.00 solely in favor of the non-Unit Owner members of the WDC (the “Agreed Settlement Amount”) which shall be the basis for the Assessment to be made by the Receiver as provided in paragraph 3.d. below, without prejudice to the WDC asserting any additional damages against the Association or any other person or entity, save and except, the Participating Unit Owners who shall be released pursuant to this Agreement and be the beneficiaries of the Bar Order. The Association, acting through the Receiver, reserves all of its rights to seek recovery including but not limited to contribution and indemnification and pursue any and all claims it has or may have against any insurers or third parties, known or unknown, with respect to the Agreed Settlement Amount.

d. **Assessment.** In order to satisfy the Agreed Settlement Amount, the Receiver shall make an assessment in the amount of \$178,000,000.00. Unit Owners shall be personally liable for their share of the assessment in accordance with such Owner’s individual ownership share of the Condominium per Exhibit C to the Declaration which is attached hereto as **Exhibit B** (the “Individual Percentage Share”), Fla. Stat. § 718.119(3) and any other applicable Florida law (the “Assessment”). In connection with the filing of the Settlement Motion seeking approval of this Agreement, the Receiver will separately file a motion seeking leave of Court to assess the Unit Owners (the “Authorization Motion”). Unit Owners have the right to be heard in opposition to the Settlement Motion and the Authorization Motion, and specifically the proposed Assessment under Fla. Stat. § 718.119(3).

e. **Satisfaction of Pro Rata Assessment.** Participating Unit Owners shall be deemed to have satisfied their Individual Percentage Share of the Assessment by (i) accepting their Individual Percentage Share of the Common Fund in full and complete satisfaction of any and all claims or causes of action with respect to Participating Unit Owners Property Damage Claims they have or may have against the Association or the Condominium Property; and (ii) transferring to the Receiver their property rights in their Condominium Units and the Condominium Property as contemplated by Section 8.d., below. Any and all liens and mortgages on a Participating Unit Owner’s Condominium Unit will be satisfied by the Receiver from each respective Unit Owner’s Individual Percentage Share of the Common Fund, prior to distribution by the Receiver of excess

amounts remaining after satisfaction of any and all liens and mortgages being paid to each Participating Unit Owner, if any.

**f. Funding of Common Fund.** The Common Fund shall be funded as follows: (i) the first Fifty Million Dollars (\$50,000,000.00) of the first One Hundred Million Dollars (\$100,000,000.00) recovered from all sources; and (ii) first Thirty-Three Million Dollars (\$33,000,000.00) recovered from all sources in excess of One Hundred Million Dollars (\$100,000,000.00).

**g. Insurance Recoveries.** By separate motion, the Court shall adjudicate whether a Participating Unit Owner's Individual Percentage Share of the Common Fund should be reduced, if at all, by the amount of insurance proceeds received by any Participating Unit Owner related to or on account of the Collapse. All Parties irrevocably agree to be bound by the Court's decision with respect to this issue and agree that the Court's decision shall be binding and non-appealable. If the Court decides that such insurance amounts should be deducted from their share of the Common Fund, participating Unit Owners will have to sign, under penalty of perjury, a declaration disclosing all sources of insurance on its respective Unit (but excluding insurance on personal property).

**h. Retention of Individual Insurance Claims.** In addition retaining their Participating Unit Owners PI/Wrongful Death Claims, if any, each Participating Unit Owner retains its individual insurance claims against its personal insurers (to the extent one exists) for the contents of its Unit, but otherwise assigns to the Receiver, effective upon the Participating Unit Owner's receipt of its Individual Percentage Share of the Common Fund after satisfaction of liens and mortgages, if any, by the Receiver, all Participating Unit Owners Property Damage Claims against third parties to be held and pursued by the Receiver for the benefit of the Receivership Estate, subject to further orders of the Court. In the event a Participating Unit Owner's Individual Percentage Share of the Common Fund is insufficient to satisfy liens and mortgages on its Condominium Unit, then such Participating Unit Owner shall have no further rights in the Common Fund. To the extent a Unit Owner has individual insurance which insures his or her Unit apart from insurance covering personal property (i.e., "dwelling coverage"), the Parties agree that the Court will determine at a later date whether or not the proceeds of such "dwelling coverage" is properly applied to reduce the Participating Unit Owner's share of the Common Fund).

**i. Non-Participating Unit Owner Rights and Obligations.**

(i) Every Unit Owner shall have notice of and an opportunity to be heard at the hearing on the Court's consideration of approval of this Agreement. If the Court approves the Agreement, each Unit Owner shall have ten (10) days from the date of the order (the "Approval Order") approving the Agreement (the "Opt-Out Deadline") to opt-out of participating in the settlement memorialized by this Agreement (a "Non-Participating Unit Owner"). Any Unit Owner who elects to Opt-Out and becomes a Non-Participating Unit Owner shall do so by filing with the Court a Notice of Election to Opt-Out in the form of the notice attached to this Agreement as Exhibit "E" on or before the Opt-Out Deadline. The Non-Participating Unit Owner's Individual Percentage Share of the Common Fund shall be segregated in accordance with the provision of subsection 3.i.(iv) below. The Receiver's claims against a Non-Participating Unit Owner are expressly preserved and not released pursuant to this Agreement. For the avoidance of doubt, Non-Participating Unit Owners (X) shall remain liable for the full amount of the Assessment and any

additional assessments the Receiver may make in the future, and (Y) shall not beneficiaries of the Bar Order.

(ii) Any Non-Participating Unit Owner shall have the right to intervene and defend the claims against the Association as set forth in Florida Stat. 718.119 and the Court's order setting the deadline for such intervention.

(iii) If a Non-Participating Unit Owner seeks reconsideration of or appeals the Approval Order, the Receiver shall maintain such Non-Participating Unit Owner's Individual Percentage Share of the Common Fund in a segregated account pending further order of the Court.

(iv) Notwithstanding an appeal of the Approval Order or the Bar Order, the Receiver shall distribute to each Participating Unit Owner its Individual Percentage Share of the Common Fund, unless a court of competent jurisdiction has stayed the effectiveness of the Approval Order. Each Participating Unit Owner who accepts payment of its Individual Percentage Share of the Common Fund shall be deemed to have waived its individual appellate rights and shall be bound by this Agreement regardless of the outcome of any appeal.

**j. Additional Obligations of Participating Unit Owners.** In addition to the other obligations imposed by this Agreement, Participating Unit Owners shall (i) assign to the Receiver any Participating Unit Owners Property Damage Claims; (ii) assign to the Receiver their property interests in the Condominium Property, including their Condominium Units, and agree to sign any documents reasonably requested of them by the Receiver or anyone acting on the Receiver's behalf to facilitate the transfer of such property rights to the Receiver; and (iii) cooperate with the termination of Condominium sought in the pending *Amended Complaint for Judicial Termination of Condominium of the Champlain Towers South Condominium*, Case No. 2021-021726-CA-01, as to which the Receiver, on December 14, 2021, by executing and filing a *Joinder and Consent to Judicial Termination and Acceptance of Service of Process*.

**k. Bar Order; Carve-Out.** The Court shall enter an order, in the form attached hereto as Exhibit "A" permanently barring, restraining and enjoining any person or entity, including members of the WDC, from pursuing claims or causes of action against any Participating Unit Owner; all past and current members of the Association's Board of Directors; and Scott Stewart (the Property Manager as of the date of the Collapse). The intent of this provision is that former and current members of the Association's Board of Directors, Scott Stewart and Participating Unit Owners who did not have a tenant or guest at the time of the Collapse will have no remaining liability to the Association or WDC; *provided, however*, that (i) direct claims by tenants and guests of Unit Owners against Participating Unit Owners, if any, and (ii) claims of the Receiver to recover solely from any policy of insurance, will be carved out of the Bar Order (collectively, the "Surviving Claims").

**l. Tenant Content Claims.** Tenant's shall not share in the Common Fund in any respect. The priority, validity and amount of tenant claims for contents in any Unit destroyed in or in connection with the Collapse against the Association, to the extent they exist, is not any affected by this Agreement and will be subject to future orders of the Court.

**m. WDC Support for Settlement.** The WDC representatives agree to fully support approval of this settlement at the fairness hearing on the Motion to Approve this Agreement.

**n. Waiver of Entitlement to Share in Future Recoveries.** The Receiver and the WDC are currently pursuing numerous claims against third parties arising out of the Collapse and may bring additional actions in the future. Participating Unit Owners who are not otherwise members of the WDC shall not share in any recoveries from these claims, but instead shall be fully and solely compensated from the Common Fund.

**4. Approval of Settlement by the Court.**

**a. Filing Settlement Motion.** The Receiver shall file a motion seeking approval of this Agreement (the "Settlement Motion").

**b. Contents of Settlement Motion.** The Receiver shall request in the Settlement Motion (i) entry of the Bar Order substantially in form and substance as Exhibit A to this Agreement; (ii) approval of the form and content of the notice attached hereto as **Exhibit C**, (the "Notice") and the manner and method of publication of such notice (the "Preliminary Approval Order"); and the form of the Opt-Out Notice attached hereto as **Exhibit D**.

**c. Service and Notice.** In accordance with the Preliminary Approval Order, the Receiver shall use best efforts to provide good and sufficient notice of this Agreement, the Settlement Motion, and the deadline to object to approval of this Agreement and the Bar Order to all affected and interested persons and parties.

**5. Releases.**

**a. Release of Participating Unit Owners.** Effective upon the Receiver segregating the Common Fund, by the earlier of the 21<sup>st</sup> Day or the Later Funding Date, and without the need for execution and delivery of additional documentation or the entry of an Order approving the Allocation of the Common Fund, each of the Receiver and any person or entity claiming by or through him, on behalf of the Receivership Estate, and the members of the WDC, or anyone claiming through them, including but not limited to their heirs, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Participating Unit Owners, and all of their counsel, from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies, attorneys' fees, costs of court, interest and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Receiver, the Receivership Estate or members of the WDC, or anyone claiming through them, on their behalf or for their benefit, may have or claim to have, now or in the future, against the Participating Unit Owners arising directly or indirectly in any manner whatsoever from the Association's activities, work, conduct, omissions, or services in connection with the Champlain Tower, the Condominium Property or the Collapse, to the broadest extent permitted by law. Notwithstanding anything contained in this Agreement, to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing: (i) the Participating



Unit Owners from the performance of its obligations in accordance with this Agreement; or (ii) the Surviving Claims.

**b. Release of Receiver and Receivership Estate.** Effective upon the Participating Owner's receipt of its Individual Percentage Share of the Common Fund, and without the need for execution and delivery of additional documentation or the entry of an Order approving the Allocation of the Common Fund, each of the Participating Unit Owners and any person or entity claiming by or through them, including but not limited to their heirs, shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the Receiver<sup>4</sup> and the Receivership Estate, and all of their counsel, from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies, attorneys' fees, costs of court, interest and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Participating Unit Owners and any person or entity claiming by or through them, including but not limited to their heirs, on their behalf or for their benefit, may have or claim to have, now or in the future, against the Receiver and the Receivership Estate arising directly or indirectly in any manner whatsoever relating to the Participating Owners' Property Damage Claim. Notwithstanding anything contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the Receiver or the Receivership Estate from: (i) the performance of its obligations in accordance with this Agreement; and, (ii) the Participating Unit Owners PI/Wrongful Death Claims.

**c. Injunctive Relief.** Except as otherwise expressly set forth in this Agreement, the Parties, and any persons, entities or individuals they control, as well as any person or entity acting on behalf of any of the foregoing pursuant to and memorialized in a writing, shall not sue or otherwise bring any suit or claim in any court, arbitration or other tribunal against each other for any of the claims released by the Parties to this Agreement. Any Party who violates this Agreement agrees that the non-violating Party is entitled to injunctive relief against the violating Party. The Parties further agree that any Party violating this section is solely liable for any and all reasonable attorneys' fees and expenses of any other Party as a result of any such suit or claim by the violating Party.

**6. Reversal, Vacatur or Modification.**

**a.** The Participating Unit Owners' willingness to enter into this Agreement is expressly and entirely contingent upon the Bar Order becoming Final. In the event that the Bar Order is not entered in substantially the form submitted by the Parties, is vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Participating Unit Owners as more fully described in the Bar Order attached hereto as Exhibit A, then:

i. The Parties are not bound by the releases set forth in this Agreement.

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<sup>4</sup> Note 1, supra.

ii. The Parties shall litigate their claims as if this Agreement had not been executed (except that the Consolidated Class Action will remain subject to orders issued before the Execution Date).

b. Any and all applicable periods of limitations, as well as any and all applicable time-related defenses (including, without limitation, any and all time-related defenses based upon waiver, laches or estoppel), are hereby tolled as to any claim, counterclaim, crossclaim, and/or defense that the Parties could assert against any other Party. The tolling period shall commence as of the Execution Date of this Agreement and shall continue until ninety (90) days after the Court refuses to issue the Bar Order, or the Bar Order, after having been issued by the Court is vacated or reversed on appeal, in whole or in part, or modified in any manner such that it no longer bars the commencement or continuation of any and all civil actions against the Participating Unit Owners as more fully described in the Bar Order attached hereto as Exhibit A (the "End Date"). This Section is intended to preserve the status quo as to any and all statutes of limitations regarding all of the Parties' claims and defenses from the Execution Date until the End Date.

## 7. Representations and Warranties.

a. Representations and Warranties of the Participating Unit Owners. Each Participating Unit Owner represents and warrants that as of the Execution Date: (i) it has full requisite power and authority to execute and deliver and to perform its obligations under this Agreement, and the execution, delivery and performance hereof, and the instruments and documents required to be executed by it in connection herewith have been duly and validly authorized by them; (ii) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against it which would materially and adversely affect its ability to enter into this Agreement or to perform its obligations hereunder; (iii) it will pursue the approval of this Agreement, including entry of the Bar Order, in good faith and using its best efforts; (iv) it will perform the obligations created by this Agreement and cooperate with the Receiver and members of the WDC in good faith regarding this Agreement; and (v) it has not assigned any of the claims released herein.

b. Representation and Warranties of the Receiver. The Receiver hereby represents and warrants that as of the Execution Date: (i) subject to the Court's approval of this Agreement, he has the power and authority to bind the Receivership Estate to the terms of this Agreement; (ii) the Receiver will pursue the approval of this Agreement, including entry of the Bar Order, in good faith and using his best efforts; (iii) he will perform the obligations created by this Agreement and cooperate with the Participating Unit Owners, members of the WDC and the Plaintiffs in the Consolidated Class Action in good faith regarding this Agreement; (iv) he has not assigned any of the claims being released herein; and (v) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against the Receiver or the Receivership Estate which would materially and adversely affect the Receiver's ability to enter into this Agreement or to perform his obligations hereunder.

c. Representation and Warranties of the WDC Members. The WDC hereby represents and warrants that as of the Execution Date: (i) it is authorized to enter into this Agreement; (ii) it will pursue the approval of this Agreement, including entry of the Bar Order, in

good faith and using their best efforts; (iii) it will perform the obligations created by this Agreement and cooperate with the Receiver, Participating Unit Owners and Plaintiffs in the Consolidated Class Action in good faith regarding this Agreement; (iv) it has not assigned any of the claims released herein; and (v) no proceeding, litigation or adversary proceeding before any court, arbitrator or administrative or governmental body is pending against the members of the WDC which would materially and adversely affect the WDC's member's ability to enter into this Agreement or to perform its obligations hereunder.

d. **No Assignment.** For avoidance of doubt, the Parties represent and warrant that, as of the Execution Date, there has been no assignment of any claims that are being released, or are purporting to be released, by the Parties to this Agreement, such that the Parties are able to give the releases provided for herein to the broadest extent permitted by law. .

## 8. **Covenants and Post-Closing Responsibilities**

a. **Covenants of the Participating Unit Owners.** Each Participating Unit Owner covenants and agrees that it shall provide all cooperation reasonably necessary to obtain (and shall take no unreasonable action to impede or preclude) the entry of the Bar Order, and the implementation of this Agreement and shall execute and deliver any and all documents reasonably requested by the Receiver to terminate the Condominium and the Participating Unit Owners' rights in the Condominium Property, including their Units located therein.

### b. **Covenants of the Receiver.**

i. The Receiver, for himself and the Receivership Estate, covenants and agrees that he shall take, and shall cause the Receivership Estate to take, all actions reasonably necessary to obtain (and shall take no action to impede or preclude) the entry of the Bar Order, and the implementation of this Agreement.

ii. The Receiver, for himself and on behalf of the Receivership Estate, hereby covenants and agrees that he shall take, and shall cause the Receivership Estate to take, all actions reasonably necessary to enforce and carry out the Bar Order, and this Agreement, including all reasonable requests by the Participating Unit Owners to enforce the Bar Order, and this Agreement. For the avoidance of doubt, it shall be the Receiver and his professionals who will seek enforcement of the Bar Order in the event any person or entity brings or seeks to bring a claim against any of the Participating Unit Owner Released Parties that may be prohibited by, or in violation of, the Bar Order. The Receiver's obligation to seek enforcement of the Bar Order shall terminate upon the entry of an order closing the Receivership Estate.

c. **Covenants of the Members of the WDC.** The members of the WDC covenant and agree that they shall provide all cooperation reasonably necessary to obtain (and shall take no unreasonable action to impede or preclude) the entry of the Bar Order, and the implementation of this Agreement.

9. **Miscellaneous.**

a. **Amendments.** This Agreement may not be modified, amended or supplemented except by a written agreement executed by the Parties and approved by the Court.

b. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and assigns, including without limitation upon any successor receiver, or any trustee, custodian, or other estate representative appointed in a case under title 11 of the United States Code.

c. **No Admission of Liability.** The execution of this Agreement is not intended to be, nor shall it be construed as, an admission or evidence in any pending or subsequent suit, action, proceeding or dispute of any liability, wrongdoing, or obligation whatsoever (including as to the merits of any claim or defense) by any Party to any other Party or any other person with respect to any of the matters addressed in this Agreement. None of this Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement: (i) is or may be deemed to be or may be used as an admission or evidence of the validity of any claim, or any allegation made against any Party; (ii) is or may be deemed to be or may be used as an admission or evidence of any liability, fault or omission of any Party in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed to be or used as admission or evidence of or have any evidentiary, res judicata, or collateral estoppel effect on the Plaintiffs' or Receiver's ability to assert claims, as applicable, against any party other than the Participating Unit Owners or the members of the WDC. None of this Agreement, the settlement, or any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement shall be admissible in any proceeding for any purposes, except in the Consolidated Class Action or the Subrogation Action and solely for the purposes of determining whether to approve this Agreement or to enforce rights under this Agreement, to the extent necessary, and except that the Receiver and any of the other Parties may file this Agreement in any action to enforce this Agreement, to enforce the Bar Order, or to support a defense or counterclaim based on the principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

d. **WAIVER OF JURY TRIAL. THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF OR RELATED TO THIS ALLOCATION AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING THIS ALLOCATION AGREEMENT.**

e. **Good Faith Negotiations.** The Parties further recognize and acknowledge that each of the Parties hereto is represented by independent counsel, and such Party received independent legal advice with respect to the dispute giving rise to this Agreement and the advisability of entering into this Agreement. Each of the Parties acknowledges that the negotiations leading up to this Agreement were conducted regularly, at arm's length, and in good faith; this Agreement is made and executed by and of each Party's own free will based on its own

investigation and evaluation of the matters in dispute and after consultation with independent counsel; that each Party knows all of the relevant facts and his or its rights in connection therewith; and that he or it has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any party or employee, agent, attorney or representative of any Party to this Agreement. Each Party further acknowledges and agrees that it is not entering into this Agreement in reliance upon any statement or representation made by any other Party, or the lack of any statement or representation made by any other Party, except for the statements or representations that are expressly made in this Agreement. The Parties further acknowledge that they entered into this Agreement because of their desire to avoid the uncertainties and risks associated with continued litigation, and to compromise permanently and settle the claims and potential claims between the Parties that are settled by this Agreement.

**f. Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the signatories hereto and the “Released Parties” any right, remedy or claim under or by reason of this Agreement or any covenant, condition or stipulation thereof, and the covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the signatories hereto, the “Released Parties” and their respective successors and assigns. For the avoidance of doubt, only the signatories hereto, the “Released Parties”, and their respective successors and assigns may seek to enforce this Agreement.

**g. Governing Law; Retention of Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to any principles of conflicts of law. The prior sentence does not preclude reliance on other law as necessary in the Consolidated Class Action to obtain dismissal of that lawsuit with respect to any claims being brought by the Participating Unit Owners. By its execution and delivery of this Agreement, each of the Parties hereby irrevocably and unconditionally agrees that any legal action, suit or proceeding between the Parties with respect to any matter under or arising out of or in connection with this Agreement shall be brought in the Miami-Dade County Circuit Court before the Circuit Court Judge presiding over the Receivership Estate.

**h. Entire Agreement.** This Agreement constitutes the full and entire agreement among the Parties with regard to the subject hereof, and supersedes all prior negotiations, representations, promises or warranties (oral or otherwise) made by any Party with respect to the subject matter hereof. No Party has entered into this Agreement in reliance on any other Party’s prior representation, promise or warranty (oral or otherwise), except for those that may be expressly set forth in this Agreement.

**i. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same Agreement. Copies of executed counterparts transmitted by telecopy or other electronic transmission service shall be considered original executed counterparts, provided receipt of copies of such counterparts is confirmed.

**j. Notices.** Any notice required or permitted to be provided under this Agreement shall be in writing and served by electronic mail and either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

If to the Receiver, to:

Michael I. Goldberg, Esq.  
Akerman LLP  
350 East Las Olas Blvd., Suite 1600  
Fort Lauderdale, FL 33301  
Tel: (954) 468-2444  
Fax: (954) 463-2224  
Email: [michael.goldberg@akerman.com](mailto:michael.goldberg@akerman.com)

with a copy to:

Paul Steven Singerman, Esq.  
Berger Singerman LLP  
1450 Brickell Ave., Suite 1900  
Miami, FL 33131  
Tel: (305) 755-9500  
Fax: (305) 714-4340  
Email: [singerman@bergersingerman.com](mailto:singerman@bergersingerman.com)

If to the members of the WDC, to:

Judd Rosen, Esq.\*  
Goldberg & Rosen, P.A.  
One Biscayne Tower  
2 S Biscayne Blvd., Suite 3650  
Miami, FL 33131  
Tel: (305) 374-4200  
Fax: (305) 374-8024  
Email: [jrosen@goldbergandrosen.com](mailto:jrosen@goldbergandrosen.com)

Rachel Wagner Furst, Esq.\*  
Grossman Roth Yaffa Cohen, P.A.  
2525 Ponce de Leon Blvd., Ste 1150  
Coral Gables, FL 33134-6040  
Tel: (305) 547-9700  
Fax: (305) 285-1668  
Email: [RWF@grossmanroth.com](mailto:RWF@grossmanroth.com)

Ricardo Martinez-Cid, Esq.\*  
Podhurst Orseck, P.A.  
1 SE 3rd Ave Ste 2300  
Miami, FL 33131-1716  
Tel: (305) 358-2800  
Fax: (305) 358-2382  
Email [rmcid@podhurst.com](mailto:rmcid@podhurst.com)

Jorge Silva, Esq.\*  
Carlos Silva, Esq.\*  
Silva & Silva, P.A.  
236 Valencia Ave  
Coral Gables, FL 33134-5906  
Tel: (305) 445-0011  
Fax: (305) 445-1181  
Email: [jsilva@silvasilva.com](mailto:jsilva@silvasilva.com)  
Email: [csilva@silvasilva.com](mailto:csilva@silvasilva.com)

If to the Participating Unit Owners:

Gonzalo R. Dorta, Esq.\*  
Dorta Law  
334 Minorca Ave.  
Coral Gables, FL 33134  
Tel: (305) 441-2299  
Fax: (305) 441-8849  
email: [grd@dortalaw.com](mailto:grd@dortalaw.com)

Harley S. Tropin, Esq.\*  
Javier Lopez, Esq.\*  
Kozyak Tropin & Throckmorton, LLP  
2525 Ponce de Leon Boulevard  
Miami, FL 33134  
Tel: (305) 372-1800  
Fax: (305) 372-3508  
Email: [hst@kttlaw.com](mailto:hst@kttlaw.com)  
Email: [jal@kttlaw.com](mailto:jal@kttlaw.com)

Adam M. Moskowitz, Esq.\*  
The Moskowitz Law Firm  
2 Alhambra Plaza, Suite 601  
Coral Gables, FL 33134  
Tel: (305) 740-1423  
Fax: (305) 786-298-5737  
Email: [adam@moskowitz-law.com](mailto:adam@moskowitz-law.com)

\*Counsel signing on behalf of the members of the WDC and Participating Unit Owners and do so solely in their capacity as counsel and shall not be deemed a party to this Agreement with any resulting obligations or liability thereunder.

**k. Further Assurances.** Each of the Parties agrees to execute and deliver, or to cause to be executed and delivered, all such instruments, and to take all such action as the other Parties may reasonably request, in order to effectuate the intent and purposes of, and to carry out the terms of, this Agreement.

**l. Tax Treatment and Obligations.** Any Party receiving funds under this

Agreement is responsible for its or his/her own tax payments, filings and obligations relating to the receipt of such funds and takes sole and complete responsibility for any tax characterization of such funds or any tax obligations relating to the receipt of such funds.

**m. Voluntary, Knowing and Complete Agreement.**

i. Each Party executing this Agreement acknowledges and represents that such Party has read this Agreement carefully and in its entirety; that this Agreement and the exhibits referenced herein, including but not limited to the Bar Order, express all of the understandings and agreements between and among the Parties concerning the subject of this Agreement; and that each Party has executed this Agreement freely and voluntarily, and without duress or other undue influence, after consulting with his, her, or its independent legal counsel.

ii. Each Party hereto acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to the causes of action, claims, liabilities, demands, obligations, or damages of any nature whatsoever that are the subject of the releases set forth above, and each Party expressly agrees to assume the risk of the possible discovery of additional or different facts, and agrees that this Agreement shall be and shall remain effective in all respects regardless of the later discovery of such additional or different facts.

**n. Execution.** By executing this Agreement, all of the undersigned persons represent to each of the other Parties to this Agreement that they are legally and mentally competent, fully advised as to the meaning of this Agreement, including through consultation with counsel of their own choosing, that they are fully authorized to execute this Agreement on behalf of themselves individually or their respective Parties, and that upon the execution by the undersigned, the Parties will be bound by the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the latest date set forth below.

\s\ Michael I. Goldberg  
Michael I. Goldberg, solely in  
his capacity as Receiver for the  
Receivership Estate

\s\ Gonzalo R. Dorta  
Gonzalo R. Dorta, Esq., solely  
in his capacity as Court-appointed  
counsel to the Participating Unit Owners  
for purposes of the Allocation Mediation

\s\ Judd G. Rosen  
Judd G. Rosen, Esq., solely in his  
capacity as Court-appointed  
counsel to the WDC who are not Unit Owners  
for purposes of the Allocation Mediation



**EXHIBIT A**  
**[Bar Order]**

**[TO BE FILED]**

**EXHIBIT B**  
**Individual Percentage Share Chart**

**EXHIBIT "C"****Percentage Share**

<u>Apt. Type</u>	<u>Number of Units</u>	<u>Individual Percentage Share</u>	<u>Combined Percentage Share</u>
A	12	.010022	.120264
B	12	.007951	.095412
C	23	.007447	.171281
D	11	.007786	.085646
E	11	.007126	.078386
F	11	.007698	.084678
G	22	.005346	.117612
H	22	.006347	.139634
I	11	.007698	.084678
J	<u>1</u>	.022409	<u>.022409</u>
Totals	136		100%

**EXHIBIT "C"****Schedule of Apartment Units**

<u>Apartment Type</u>	<u>Apartment Numbers</u>	<u>Number of Units</u>
A	112, 212, 312, 412, 512, 612, 712, 812, 912, 1012, 1112, PH-12	12
B	101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, PH-1	12
C	202, 302, 402, 502, 602, 702, 802, 902, 1002, 1102, PH-2, 111, 211, 311, 411, 511, 611, 711, 811, 911, 1011, 1111, PH-11	23
D	210, 310, 410, 510, 610, 710, 810, 910, 1010, 1110, PH-10	11
E	205, 305, 405, 505, 605, 705, 805, 905, 1005, 1105, PH-5	11
F	209, 309, 409, 509, 609, 709, 809, 909, 1009, 1109, PH-9	11
G	206, 306, 406, 506, 606, 706, 806, 906, 1006, 1106, PH-6, 207, 307, 407, 507, 607, 707, 807, 907, 1007, 1107, PH-7	22
H	203, 303, 403, 503, 603, 703, 803, 903, 1003, 1103, PH-3, 204, 304, 404, 504, 604, 704, 804, 904, 1004, 1104, PH-4	22
I	208, 308, 408, 508, 608, 708, 808, 908, 1008, 1108, PH-8	11
J	PH-A	<u>1</u>
	TOTAL	136 UNITS

**EXHIBIT C**  
**NOTICE**

**[TO BE FILED]**

**EXHIBIT D**  
**[Opt-Out Notice]**

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

**In re:**

**Champlain Towers South Collapse Litigation.**

\_\_\_\_\_ /

**NOTICE OF ELECTION TO OPT-OUT**

I / We elect to **opt-out** of that certain *Allocation Settlement Agreement* (the “Settlement Agreement”), entered into by and between Michael I. Goldberg, as Receiver on behalf of Champlain Towers South Condominium Association Inc. (the “Receiver”), the members of the WDC<sup>1</sup>, and the Unit Owners dated March \_\_\_\_, 2022.

\_\_\_\_\_  
[NAME OF CLAIMANT(S)]

\_\_\_\_\_  
[ADDRESS OF CLAIMANT(S)]

\_\_\_\_\_  
[IF CLAIMANT IS A CORPORATE ENTITY, NAME AND TITLE OF AUTHORIZED SIGNER]

\_\_\_\_\_  
[UNIT NUMBER]

\_\_\_\_\_  
[DATE]

\_\_\_\_\_  
<sup>1</sup> All capitalized terms not defined herein shall have the meanings ascribed to them in the Settlement Agreement.